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One Metropolitan Square, 16th Floor
St. Louis, Missouri 63102

Telephone (314) 231-5400
Facsimile (314) 231-4342

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Type of paper transmitted: Petition Under 37 C.F.R. § 1.181(a)
and Declaration of Inventor Debra Durrance

Applicant's Name: Robert L. Popp et al.

Serial No.: 10/036,573 Examiner: K. Reichle

Filing Date: 12/31/01 Art Unit: 3761 Confirmation No.: 4042

Application Title: MECHANICAL FASTENING SYSTEM FOR AN ABSORBENT
ARTICLE

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of Robert L. Popp, et al.

Art Unit 3761

Serial No. 10/036,573

Filed December 31, 2001

Confirmation No. 4042

For MECHANICAL FASTENING SYSTEM FOR AN ABSORBENT ARTICLE

Examiner Karin M. Reichle

February 20, 2006

PETITION UNDER 37 C.F.R. § 1.181(a)

TO THE COMMISSIONER FOR PATENTS AND TRADEMARKS,

SIR:

Applicants petition to request entry of amendments, withdrawal of the Examiner's objection to the drawings under 37 C.F.R. §1.83(a), and withdrawal of the requirement to cancel "new matter" from the specification in the above-referenced patent application.

**FACTS, POINTS TO BE REVIEWED, AND REQUESTED ACTIONS
REGARDING AMENDMENTS TO THE DRAWINGS**

A.) Applicants request entry of amended Figure 2.

An amended Figure 2 has been submitted to the Office by the applicants three times to simply add a lead line from reference number 66 to the structure in denotes (i.e., an attachment line). See applicants Amendment B filed December 15, 2003, Amendment D filed December 7, 2004, and Amendment E dated June 22, 2005. Entry of the amendment to Figure 2 has been repeatedly denied by the Examiner. Most recently in the final Office action dated December 21, 2005, the Examiner states at paragraph 4, page 3, that "[t]he drawings are objected to because in Figure 2, upper

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left hand corner, there should be a line from 66 to the structure it denotes." Since amended Figure 2 has a lead from reference number 66 to the associated attachment line, applicants are unsure why the Examiner has repeatedly refused to enter the amended Figure. No explanation for this obstinacy has been offered by the Examiner.

Applicants submit that amended Figure 2 is in proper form and should be entered. Thus, entry of Figure 2, as amended, is respectfully requested.

B.) Applicants request entry of amended Figure 3.

An amended Figure 3 has been submitted to the Office by the applicants three times to simply delete reference 78 and the associated lead line. See applicants Amendment B filed December 15, 2003, Amendment D filed December 7, 2004, and Amendment E dated June 22, 2005. Like entry of the amendment to Figure 2, the entry of the amendment to Figure 3 has been repeatedly denied by the Examiner. Most recently in the final Office action dated December 21, 2005, the Examiner states at paragraph 6, page 4, "in Figure 3, what is 78?" Again, the reason for the Examiner repeatedly refusing to enter amended Figure 3 is unclear since the amended figure clearly obviates the Examiner's issue with Figure 3. No explanation has ever been given by the Examiner.

Applicants submit that amended Figure 3 is also in proper form and should be entered. Thus, entry of Figure 3, as amended, is respectfully requested.

The disclosure is also objected to by the Examiner for having reference number 78 in Figure 3. Entry of amended Figure 3 into the record will obviate the Examiner's objection to the specification based on reference number 78

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appearing in Figure 3. Thus, applicants also request that the Examiner's objection to the disclosure based on reference number 78 appearing in Figure 3 be withdrawn.

C.) Applicants request entry of Figures 8 and 9a-9b

As best understood by the Applicants Figures 8 and 9a-9b, have not been entered by the Examiner because 1) the Examiner is of the opinion that Figures 8 and 9a-9b do not show the "oriented" web material as described or claimed, and 2) Figure 9 is described as a top plan view of the fastener of Figure 8 with the loop material shown drawn and secured to the substrate but the substrate is not shown in Figure 9.

The very requirement for these drawings is suspect. Nonwoven oriented loop material is not the invention. This is a known material, as explained in the Declaration of Debra Durrance submitted on June 3, 2005. A copy of this Declaration is attached to this Petition. The drawings have always illustrated components 84, 85 made of a material identified as oriented nonwoven loop material (see Fig. 2, and p. 22, ll. 16-19). The Examiner has maintained that oriented nonwoven loop material was not shown in the drawings. It has never been found to be necessary by the undersigned to submit a drawing of the molecular structure of iron when describing an iron plate of known composition, or to show the weave of cloth when claiming a fabric of conventional construction. No such drawing has been or should be required. Nevertheless, in an attempt to expedite examination applicants have submitted drawings (Figs. 8, 9a and 9b) to schematically illustrate nonwoven oriented loop material. The Examiner now endlessly objects

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to these drawings that she required to show a known construction.

With respect to the Examiner's finding that Figures 8, 9a, and 9b do not show the "oriented" web material as described or claimed, applicants disagree. Fig. 8 has been added to illustrate one of the loop fasteners 85 comprising an oriented nonwoven loop material 90 secured to a substrate 92. Figure 9a has been added to show the general orientation of the constituent fibers of the nonwoven web before tensioning thereof to orient the fibers, and Figure 9b, which is a top plan view of Figure 8, has been added to show the general orientation of the constituent fibers of the nonwoven web after tensioning thereof. As can be seen, upon tensioning of the web more of the constituent fibers become oriented in the general direction of tension than before tensioning of the web to thereby define the oriented web.

Support for adding Figs. 8, 9a, and 9b can be found at least at page 9, lines 16-18; page 23, lines 23-27; page 27, line 8 to page 28, line 20; and the claims of the application as originally filed. As described in the specification, Figure 6 schematically illustrates a flow diagram for manufacture of one embodiment of the oriented nonwoven loop material that has fibers oriented in the machine direction, and Figure 7 schematically illustrates a flow diagram for manufacture of another embodiment of the oriented nonwoven loop material that has fibers oriented in the cross machine direction. The fibers of the resultant oriented nonwoven loop material are oriented in a selected direction by the application of a force. Figure 9a shows the fibers of the web before orientation whereas Figures 8

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and 9b show the fibers of the web after they have been oriented.

Moreover, original claims 1 and 6 recited, in part, an "oriented nonwoven loop material comprising a nonwoven web and produced by application of a force causing constituent fibers of the nonwoven web to become oriented in a direction of the applied force". Original claims 12 and 15 recited, in part, an "oriented nonwoven loop material produced by application of a force causing constituent fibers of the nonwoven web to become oriented in a direction of the applied force ". Original claim 22, 24, and 26 were directed to a method of making a mechanical fastening system for an article comprising forming an oriented nonwoven loop material from a nonwoven web of substantially continuous fibers by drawing the nonwoven web using an applied force to align constituent fibers of the nonwoven web.

In summary, Figures 8, 9a, and 9b show the orientation of the fibers of the web before and after it is oriented as described in the specification. Accordingly, Figures 8, 9a, and 9b are supported by the specification as originally filed.

Figures 8, 9a, and 9b also show the "oriented" web material as currently claimed. The independent claims currently pending in this case are claims 28, 33, 40, and 42. Claims 28 and 33 recite, in pertinent part, an oriented nonwoven loop material secured to a substrate, the oriented nonwoven loop material comprising a nonwoven web of fibers in which a greater number of fibers are oriented in a selected direction by the application of a force in the selected direction.

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An oriented nonwoven loop material secured to a substrate as recited in claims 28 and 33 is clearly shown in Figure 8. The oriented nonwoven loop material is identified by reference number 90 and the substrate is identified by reference number 92. Thus, Figure 8 does show the oriented nonwoven loop material secured to a substrate as claimed in claims 28 and 33.

Figures 8 and 9b show the oriented nonwoven loop material comprising a nonwoven web of fibers in which a greater number of fibers are oriented in a selected direction by the application of a force in the selected direction. Figure 9a shows the general orientation of the fibers of the nonwoven web before the fibers are oriented. In other words, Figure 9a shows the nonwoven web before a force, such as shown in Figures 6 and 7, is applied to the web. Figures 8 and 9b show the general orientation of the constituent fibers of the nonwoven web after a force has been applied to the web. Thus, Figures 8, 9a, and 9b do show the oriented nonwoven loop material comprising a nonwoven web of fibers in which a greater number of fibers are oriented in a selected direction by the application of a force in the selected direction as claimed in claims 28 and 33.

Figures 8, 9a, and 9b also show the "oriented" web material as currently claimed in claims 40 and 42. Claim 40 recites, in pertinent part, a loop material formed by a nonwoven web of fibers, the fibers in the nonwoven web being oriented by drawing of the nonwoven web of fibers in a direction so that more of the fibers are oriented in the direction of drawing than prior to drawing of the nonwoven web of fibers. Claim 42 is similar to claim 40 but recites

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that the fibers in the nonwoven web being oriented by application of force to the nonwoven web of fibers in a direction so that more of the fibers are oriented in the direction of force than prior to applying a force to the nonwoven web of fibers.

As mentioned above, Figures 6 and 7 schematically illustrate how the fibers of the oriented nonwoven loop material can be oriented in the machine direction and the cross machine direction, respectively. The fibers of the nonwoven material shown in Figures 6 and 7 are being oriented in a selected direction by the application of a force. Figure 9a shows the general orientation of the fibers of the nonwoven web before a force is applied thereto, and Figures 8 and 9b show the general orientation of the fibers of the nonwoven web after a force has been applied. Thus, Figures 8, 9a, and 9b do show the fibers in the nonwoven web being oriented by drawing or by application of force as claimed in claims 40 and 42, respectively.

Accordingly, Figures 8, 9a, and 9b do show the "oriented" web material as currently claimed.

With respect to Figure 9 being described as a top plan view of the fastener of Figure 8 with the loop material shown drawn and secured to the substrate but the substrate is not shown in Figure 9, the loop material 90 is clearly shown secured to substrate 92 in Figure 8. Since Figure 9 is described as being a top plan view of Figure 8, the substrate does not need to be shown again in Figure 9 because it is obscured by the nonwoven loop material.

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For these reasons, applicants request entry of Figures 8, 9a, and 9b.

D.) Applicants request the Examiner's objection to the drawings under 37 C.F.R. §1.83(a) be withdrawn.

The Examiner has objected to the drawings under 37 C.F.R. §1.83(a) as failing to show every feature of the invention specified in the claims. Specifically, the Examiner posits that the drawings do not show an "oriented nonwoven loop material" that is being oriented by the application of force, and which has fibers that are oriented by the application of force.

As indicated above, Figures 6 and 7 show an "oriented nonwoven loop material" that is being oriented by the application of force. As indicated at page 5, lines 17-20 of the specification, Figure 6 schematically illustrates a flow diagram for manufacture of one embodiment of the oriented nonwoven loop material that would make a material oriented in the machine direction. As described at page 27, line 8 of the specification, Figure 6 schematically shows how a nonwoven can be drawn between two nips to orient the material in the machine direction. The illustrated drawing process is described as orienting the nonwoven fibers to be more aligned in the machine direction than in the cross direction.

Figure 7 schematically illustrates a flow diagram for manufacture of another embodiment of the oriented nonwoven loop material that would make a material oriented in the cross machine direction. See page 5, lines 21-24 of the specification. Figure 7 schematically shows how a nonwoven can be drawn in the cross machine direction to orient the material and its constituent fibers in the cross machine

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direction. See page 28, line 8 of the specification. Thus, the cross machine direction drawing process illustrated in Figure 7 orients the nonwoven in the cross machine direction and orients the fibers of the nonwoven in the cross machine direction.

Thus, Figures 6 and 7 clearly show (and are described in the specification as showing) an "oriented nonwoven loop material" that is being oriented by the application of force.

Figures 8 and 9b, as mentioned above, shows the orientation of the constituent fibers of the nonwoven web after tensioning thereof. In other words, the fibers of the nonwoven web shown in Figures 8 and 9b are oriented by the application of force.

Accordingly, applicants request that the Examiner's objection to the drawings under 37 C.F.R. §1.83(a) be withdrawn.

**FACTS, POINTS TO BE REVIEWED, AND REQUESTED ACTIONS
REGARDING AMENDMENTS TO THE SPECIFICATION**

A.) Applicants request entry of the amendment to paragraph beginning "Figure 9 is" at page 5 of the specification.

The Examiner has again denied entry of the amendment to the paragraph that begins "Figure 9 is" on page 5 of the specification as failing to comply with 37 C.F.R. §1.121. See paragraph 2, page 2 of the final Office action. The amended paragraph was added to the specification by the Applicants in Amendment B filed December 15, 2003.

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In Amendment D dated December 7, 2004, applicants submitted the following amendment.

Please amend the paragraph (added previously) that begins "Figure 9 is" as follows:

~~Figure 9a is an enlarged photomicrograph of a nonwoven web in an extended configuration in which more fibers of the web are oriented generally in the direction in which the web is extended~~ is a top plan view of an orientable non-woven loop material of the present invention prior to being oriented and secured to a backing substrate.

Figure 9b is a top plan view of the loop fastener of Fig. 8 with the loop material of Fig. 9a shown drawn to orient constituent fibers of the loop material in the direction of the extension, and secured to the backing substrate.

The Examiner in denying entry of the amendment stated that the amendment was not entered because the "new paragraphs" were underlined. See page 3, paragraph 3 of the Office action dated February 22, 2005. Accordingly, applicant submitted the following amendment in Amendment E dated June 22, 2005 wherein the "new paragraphs" were not underlined to comply with the Examiner's request.

Please replace the paragraph (added previously) that begins "Figure 9 is" on page 5 with the following:

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Figure 9a is a top plan view of an orientable non-woven loop material of the present invention prior to being oriented and secured to a backing substrate.

Figure 9b is a top plan view of the loop fastener of Fig. 8 with the loop material of Fig. 9a shown drawn to orient constituent fibers of the loop material in the direction of the extension, and secured to the backing substrate.

Applicants submit that amendments complied with 37 C.F.R. §1.121 and therefore, should have been entered by the Examiner. With respect to the amendment made in Amendment D, 37 C.F.R. §1.121(b)(1)(i) provides that an amendment to the specification must identify the location 1) to delete one or more paragraphs of the specification, 2) replace a paragraph with one or more replacement paragraphs, or 3) add one or more paragraphs.

Applicants in accordance with 37 C.F.R. §1.121(b)(1)(i) replaced the paragraph (i.e., the one that begins "Figure 9 is") with two replacement paragraphs. 37 C.F.R. §1.121(b)(1)(ii) provides that the format for replacing a paragraph is to show markings. In other words, 37 C.F.R. §1.121(b)(1)(ii) provides that the added subject matter should be underlined and the deleted matter should be struck-through. That is what the applicants did.

As best understood by the applicants, it is the Examiner's position that the first paragraph beginning "Figure 9a ~~is an enlarged~~" was presented correctly but the second paragraph beginning "Figure 9b is a top plan" was incorrectly presented because it was underlined. Instead, according to the Examiner's position, no markings should be shown in the second paragraph since this was a "new"

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paragraph. Applicants disagree and believe the Examiner's position would lead to confusion as to what text is being added to the paragraph and what text was previously contained in the paragraph. If the Examiner's position is correct, one would need to look at the file history to determine if the paragraph beginning "Figure 9b is a top plan" was previously in the application or if it is being added. Such a position seems inconsistent with the purpose of 37 C.F.R. §1.121.

Alternatively, it is clear from the approach taken by the applicant that the paragraph beginning "Figure 9b is a top plan" is added text. Applicants approach is consistent with 37 C.F.R. §1.121 which specifically provides that a paragraph can be replaced with one or more replacement paragraphs. Applicants in Amendment D, did replace a single paragraph with two paragraphs.

With respect to the amendment made in Amendment E, the Examiner specifically requested that the Applicants treat the paragraphs (i.e., both paragraphs) as "new paragraphs" and to resubmit them without any underlining. See page 3, paragraph 3 of the Office action dated February 22, 2005. Applicants complied with the Examiner's request and did just that. Applicants resubmitted the paragraphs without any underling in accordance 37 C.F.R. §1.121(b) (1)(iii). While applicants disagreed that this is the proper means of making the amendment, they did so to accommodate the Examiner. Applicants contend that since the subsequent amendment was made in accordance with the Examiner's instructions, the Examiner should be estopped from refusing to enter the amendment.

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Accordingly, applicants request entry of the amendment to paragraph beginning "Figure 9 is" at page 5 of the specification.

B.) Applicants request that the Examiner's objection to the disclosure based on "oriented nonwoven loop material" being unclear and inconsistent be withdrawn.

With respect to the Office's position the term "oriented nonwoven loop material" is unclear and inconsistent, the specification clearly indicates to one of ordinary skill in the art that:

1) the nonwoven web of fibers has a generally random fiber orientation upon initial formation (e.g., in the configuration of the web prior to being drawn or tensioned), and

2) upon drawing or otherwise applying force to the web to tension the web in the selected direction so that the fibers will become more oriented in the direction of draw.

Thus, the term "oriented nonwoven loop material" as used in the present application means that a force was applied to the nonwoven loop material (e.g., drawn) in such a manner that at least more fibers than were previously oriented in the direction of force become oriented in the direction of force because of the force.

Support for the above position regarding the meaning of "oriented material" is provided throughout the specification including at page 28, lines 21-23 wherein U.S. Patent No. 4,965,122 is incorporated by reference. The incorporated reference discloses a suitable nonwoven web and illustrates the web at Fig. 6 thereof before extension and at Fig. 5 thereof following extension wherein

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more fibers (but far less than all of the fibers) have become oriented in the direction of draw.

Page 27, line 11 through page 28, line 20, of the present application describes Figures 6 and 7 in detail. As mentioned above, Figures 6 and 7 illustrate the process of orienting the nonwoven loop material in a selected direction by the application of force.

A declaration by Debra Durrance, one of the inventors of the present invention, has also been made of record. A copy of the declaration is attached. In paragraph 4 of the declaration, Ms. Durrance states that one of ordinary skill in the art would have understood at the time of the invention of the present application the term "oriented nonwoven loop material" to mean a web comprising fibers or filaments that is formed other than by weaving or knitting. The fibers in the web have a generally random orientation except that more of the fibers are generally parallel to a direction corresponding to a direction of force previously applied to the web. The orientation of the fibers would not be understood to be exclusively in the force direction or to be precisely parallel to the force direction. Figures 9a and 9b illustrate an oriented nonwoven loop material before and after a force are applied to the web to orient the web fibers. Figure 9a shows the general orientation of the fibers of the web before a force is applied thereto. Figure 9b, on the other hand, shows the general orientation of the fibers of the web after the force has been applied. As illustrated, more of the web fibers are oriented in a direction generally parallel to the direction of the applied force than before the force was applied to the web.

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The claims of the originally filed specification provide further support for the meaning of "oriented nonwoven loop material". For example, original claims 1 and 6 recited, in part, an "oriented nonwoven loop material comprising a nonwoven web and produced by application of a force causing constituent fibers of the nonwoven web to become oriented in a direction of the applied force". Original claims 12 and 15 recited, in part, an "oriented nonwoven loop material produced by application of a force causing constituent fibers of the nonwoven web to become oriented in a direction of the applied force ". Original claim 22, 24, and 26 were directed to a method of making a mechanical fastening system for an article comprising forming an oriented nonwoven loop material from a nonwoven web of substantially continuous fibers by drawing the nonwoven web using an applied force to align constituent fibers of the nonwoven web.

Accordingly, the meaning of "oriented nonwoven loop material" is clear and has been consistently used by the applicants throughout the specification. Most certainly a person of ordinary skill in the art would understand the meaning of "oriented nonwoven loop material" as used throughout this application.

Applicants also added the following definition of "Oriented nonwoven loop material" to page 9 of the specification in Amendment E.

"Oriented nonwoven loop material" refers to a web comprising fibers or filaments that is formed other than by weaving or knitting. The fibers in the web have a generally random orientation except that more of the fibers are generally parallel to a direction

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corresponding to a direction of force previously applied to the web.

The Examiner has taken the position that the definition of "oriented nonwoven loop material" is inconsistent because it "does not require an increase in the number of fibers oriented in the direction of an applied force due to such application, i.e. it just requires more fibers be parallel in that direction." See page 5 of the final Office action. The definition describes the fabric after the steps to achieve orientation have been carried out. It clearly defines that the orientation occurs in a direction which a force had previously been applied. By what manner of logic is this inconsistent? Unless the definition positively excluded the mechanism of reorientation of the fibers being by application of a force, it is completely consistent with any further description of the mechanism of orientation. Not only does the definition not positively exclude the mechanism of orientation of the fibers by application of force, it clearly contemplates the application of force as the mechanism of orientation.

The added definition is clearly supported by and is consistent with the rest of the specification. The definition states that the "fibers in the web have a generally random orientation except that more of the fibers are generally parallel to a direction corresponding to a direction of force previously applied to the web." This is a true and accurate statement. See, for example, Figures 9a as compared to Figures 8 and 9b. Figures 8 and 9b show more of the fibers generally parallel to a direction

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corresponding to a direction of force previously applied to the web.

It appears that the Examiner has trouble understanding the difference between "oriented" material and "orientable" material. Before the material is oriented by the application of force it is an "orientable" material. After the application of force, it is "oriented" material. It is the oriented material that is being claimed. The Examiner has provided no statement capable of being understood as to why a description of how the material becomes oriented (e.g., as occurs in the amendment to page 27, line 8 of the application) is inconsistent with a statement that describes the material after the orientation has occurred. Where is there any confusion as to when orientable material is being discussed versus oriented material. The Examiner has made no rational argument to the contrary. She points to the specification (page 30, lines 4-6) noting that the oriented material is attached to an inelastic substrate. Therefore, the oriented material and substrate cannot be extended. (See, Final Office action, para. 6, p. 6). This observation is meaningless. Once the material is oriented by application of force, it can be attached to an inelastic substrate. Nothing in the definition of oriented nonwoven loop material leaves any uncertainty as to whether the material has been oriented by application of force, or simply can be oriented by the force.

The various questions posed by the Examiner at the end of paragraph 6 of the Final Office action can all be answered by simply looking at the definition, reading the application or considering the Declaration of Debra Durrance. The Examiner has pointed to no place where there is any confusion between oriented and orientable material.

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The term oriented nonwoven loop material encompasses a web of material with fibers that are oriented generally parallel to a direction corresponding to a direction of force previously applied to the web. Whether the fibers could be further oriented by subsequent applications of force is simply irrelevant. Notwithstanding this non sequitor, applicants note that nothing in the application remotely suggests any subsequent reorientation of fibers. How many times the material is reoriented is irrelevant. Whether the number of fibers changes or not has no bearing on the definition which states that force has been applied and fibers are aligned in the direction of that force. If oriented fibers are later attached to an inelastic substrate has no bearing on how the fibers became oriented.

Applicants request that the Amendments to the specification, and in particular those amendments to page 9 of the specification, be entered.

C.) Applicants request that the Examiner's objection to the Amendment filed June 22, 2005 under 35 U.S.C. §132(a) as introducing new matter be withdrawn.

The Examiner has also objected to applicants adding the definition of "Oriented nonwoven loop material", which is provided above, to page 9 of the specification in Amendment E and therefore is requiring the definition to be cancelled. See paragraph 7, page 6 of the final Office action. The Examiner's position is that the definition adds new matter because it just requires more fibers parallel to the direction force and as such the same number of fibers could be in the direction of force before and after the force is applied. Applicants contend that the

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definition of the term "Oriented nonwoven loop material" is not new matter and is supported by the originally filed specification. As indicated in the prior section, ample support can be found in the specification for this definition. Applicants further contend that even if the Examiner's position is correct such a position would not render the definition new matter. It would simply not make the definition as narrow as the Examiner appears to want it. However, an applicant is entitled to be his or her own lexicographer so long as the original disclosure is consistent with the applicant's definition. In this case, applicants definition of "oriented nonwoven loop material" is consistent with the original specification.

CONCLUSION

The present Petition under 37 C.F.R. § 1.181 is being timely filed (i.e., less than two months after the mailing date of final Office action, which was December 21, 2005). Applicants note that this Petition is being filed to place the application in better form for appeal. Applicants intend to appeal the Examiner's rejection of the claims.

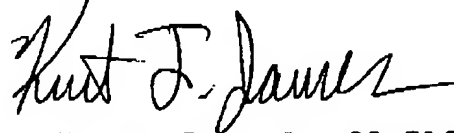
It is believed that the entry of the amendments that are the subject of this petition also overcome the rejections under 35 U.S.C. §112 of claims 3, 9, 28, 30-31, 33-37, and 40-43 on page 8 of the final Office action. Removal of these rejections would greatly simplify the issues for appeal.

The Commissioner is hereby authorized to charge the fee of \$400.00 required under 37 CFR 1.17(f) and any additional fees for the filing of this petition and credit

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any overpayment to Deposit Account Number 19-1345 in the
name of Senniger Powers.

Respectfully submitted,



Kurt F. James, Reg. No. 33,716
SENNIGER POWERS
One Metropolitan Square, 16th Floor
St. Louis, Missouri 63102
(314) 231-5400

KFJ/PEB/bcw

Via Facsimile 571-273-8300